IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re Subpoena Served On David P. Hollander

Miscellaneous Action No. ______________

Related Case: Accenture Global Services GmbH, and Accenture LLP v. Guidewire Software, Inc., Civil Action No. 1:07-cv-00826-SLR, pending in the United States District Court For The District of Delaware

ORDER GRANTING GUIDEWIRE SOFTWARE INC.'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

The Court having considered Defendant Guidewire Software, Inc's Motion to Compel Compliance with Subpoena and any opposition thereto, IT IS HEREBY ORDERED that Defendant's motion is GRANTED and David P. Hollander shall appear for deposition and produce the documents sought by the subpoena at a date and time no later than November 6, 2009.

IT IS SO ORDERED.

Dated:__________________

____

U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re Subpoena Served On David P. Hollander	**Miscellaneous Action No. ______________** **Related Case: Accenture Global Services GmbH, and Accenture LLP v. Guidewire Software, Inc., Civil Action No. 1:07-cv-00826-SLR, pending in the United States District Court For The District of Delaware**

GUIDEWIRE SOFTWARE, INC.'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

Defendant Guidewire Software, Inc. ("Guidewire"), by its attorneys, hereby moves, pursuant to Fed. R. Civ. P. 45, this Court for entry of an Order compelling David P. Hollander, a former employee of Accenture Global Services GmbH and/or Accenture LLP, to appear for a deposition and to produce documents pursuant to a subpoena dated September 8, 2009 in aid of discovery in the above-captioned action. In support of its motion, Guidewire relies upon its memorandum of law in support of this motion and the exhibits attached thereto, which are attached hereto and incorporated herein by reference.

Respectfully submitted,

WOODCOCK WASHBURN LLP

By: *Lynn B Morreale* ____________________

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OF COUNSEL:

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LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347

October 9, 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re Subpoena Served On David P. Hollander	**Miscellaneous Action No. ______________** **Related Case: Accenture Global Services GmbH, and Accenture LLP v. Guidewire Software, Inc., Civil Action No. 1:07-cv-00826-SLR, pending in the United States District Court For The District of Delaware**

GUIDEWIRE SOFTWARE, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

Defendant Guidewire Software, Inc. ("Guidewire") hereby moves this Court for the entry of an Order compelling David P. Hollander, a former employee of Accenture, to appear for a deposition and to produce documents pursuant to a subpoena dated September 8, 2009 (the "Subpoena") (Exhibit A hereto) in aid of discovery in the above-captioned action. Counsel for Guidewire and counsel for Accenture and Mr. Hollander communicated about the subject of this Motion on September 29, 2009 but after reasonable effort, the parties were unable to resolve the dispute. Counsel for Accenture and Mr. Hollander has not offered a definitive date for Mr. Hollander's deposition or production of documents pursuant to the Subpoena. In support of its motion, Guidewire states as follows:

1. On September 8, 2009, the Subpoena was duly issued out of this Court. The Subpoena was personally served at Mr. Hollander's residence on September 9, 2009 (*see* Proof of service, Exh. A).

2. The Subpoena commanded Mr. Hollander to produce documents in accordance with the description contained on the face of the Subpoena by September 22, 2009. The documents sought relate to (1) "work performed [by Mr. Hollander] for Reliance Insurance

Company [("Reliance")] on behalf of Accenture including but not limited to any contracts, draft contracts, statements of work or letter agreements," and (2) "documents discussing the technology or features that became known as Accenture's Claims Components" product. Claims Components is the commercial embodiment of a U.S. Patent on which Accenture has sued Guidewire for patent infringement in the District of Delaware (C.A. No. 07-826 (SLR), and which Guidewire contends is invalid under 35 U.S.C. §102(b) because Claims Components was in public use or on sale in the United States more than one year prior to the date of the application for patent.

3. The Subpoena also commanded Mr. Hollander to appear for a deposition in Philadelphia on September 22, 2009 at 9:00 a.m., about the subjects identified on the face of the Subpoena, including his work for Accenture and any contracts or documents relating to the offer for sale and sale to Reliance of the technology that became Claim Components. The Subpoena therefore provided two weeks notice of the deposition date.

4. On September 16, 2009, counsel for Accenture and Mr. Hollander served objections and responses to the Subpoena ("Objections to Subpoena") (Exhibit B hereto). None of those objections states a legitimate basis for refusing to produce the documents sought or making Mr. Hollander available for a deposition. For example, the objection that the Subpoena fails to set forth a reasonable date and time for compliance (Exh B, ¶ 3) has no merit, because the Subpoena provided two weeks notice and counsel for Guidewire indicated to counsel for Accenture and Mr. Hollander that they were willing to work to find a mutually agreeable date.

5. Other objections to the Subpoena are that it is "unduly burdensome," "seeks to impose requirements or obligations" in addition to those imposed by F.R.C.P. and other authorities, "seeks duplicative information already provided...to Guidewire" by Accenture in discovery, and "seeks information that is already known or available to Guidewire." (Exh B, ¶¶ 2, 4,

10, 11). All of these objections are basically burdensomeness objections, but they fail to explain how compliance with the Subpoena would place any undue burden on Mr. Hollander personally – because it would not. As described above, the scope of testimony sought is narrow, such that the deposition could be completed in half a day. Further, the objection that Guidewire has noticed depositions of numerous other current or former Accenture employees and already obtained the testimony sought from Mr. Hollander from other witnesses or discovery provided by Accenture is spurious – Guidewire is within the limit on the number of deposition hours to which Accenture stipulated and the District of Delaware approved. As to duplication, no other Accenture witness has provided detailed information about the sale to Reliance with which Mr. Hollander was involved, and Guidewire believes that Mr. Hollander has unique knowledge on that subject, but there is no way to determine if Mr. Hollander's memory is duplicative of others' memories without taking his testimony.

6. Accenture's and Mr. Hollander's objection that the information sought is not relevant or likely to lead to discovery of admissible evidence is also baseless (Exh. B, ¶ 6). As described above, the documents and testimony sought from Mr. Hollander are important to Guidewire's invalidity defense under 35 U.S.C. § 102(b) and undisputedly relevant.

7. Other objections, such as confidentiality, are not legitimate bases for refusing to comply with the Subpoena (Exh. B, ¶¶ 7-8). Mr. Hollander cannot violate confidentiality obligations under these circumstances where the deposition will be taken pursuant to a Stipulated Protective Order that Accenture agreed to and is already in place in the Delaware action. As to privilege (Exh. B, ¶ 5), Guidewire does not anticipate that the documents and testimony sought will implicate privileged information, but if that issue unexpectedly arises, counsel can claim privilege

and instruct Mr. Hollander not to answer. A potential claim of privilege, however, is not a basis for refusing to comply with the Subpoena.

8. Counsel for Accenture and Mr. Hollander also objected that the Subpoena was not personally served on Mr. Hollander, because it was served on a family member at his residence (Exh. B, ¶ 1). Numerous courts, however, have held that Rule 45 does not require service upon the deponent specifically. *See e.g., Ultradent Prods., Inc. v. Hayman*, 2002 WL 31119425, at *3 (S.D.N.Y Sep 24, 2002) ("there is no such specific requirement [that personal service is necessary under Rule 45] within the language of Rule 45. Rule 45 merely calls for 'deliver[y]' to the person"); *Western Resources, Inc. v. Union Pac. R.R. Co.*, 2002 WL 1822432, at *2 (D. Kan. Jul. 23, 2002) (effective service under Rule 45 not limited to personal service); *King v. Crown Plastering Corp.*, 170 F.R.D. 355, 356 (E.D.N.Y. 1997) (subpoena served pursuant to the Federal Rules is not required to be hand delivered so long as service is made in a manner that reasonably ensures the actual receipt of the subpoena by the witness).

9. The time specified for compliance with the Subpoena has passed, but Mr. Hollander has neither produced the requested documents nor filed a motion to quash or modify the Subpoena pursuant to Fed. R. Civ. P. 45(c)(3). Under the current scheduling order in the Delaware action, opening summary judgment briefs are due November 9, 2009. Guidewire needs the discovery sought by the Subpoena before the deadline for filing summary judgment briefs.

WHEREFORE, Guidewire respectfully requests that this Court enter an Order compelling Mr. Hollander to produce all documents in his possession, custody or control which are responsive to the Subpoena and compelling Mr. Hollander to provide dates upon which he is available for deposition on or before November 6, 2009.

Respectfully submitted,

WOODCOCK WASHBURN LLP

By: Lynn B Morreale

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OF COUNSEL:

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Wilmington, DE 19899-1347

October 9, 2009

EXHIBIT A

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Accenture Global Services GmbH & Accenture LLP
Plaintiff
v.
Guidewire Software, Inc.
Defendant

Civil Action No. 1:07-cv-00826-SLR

(If the action is pending in another district, state where:
District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: David P. Hollander, home telephone (610) 649-7555
180 Golf House Road, Haverford, PA 19041-1060

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Your experience at Accenture, your work for Reliance on behalf of Accenture, the contracts and materials documenting the offer for sale and sale of the technology that became Claim Components to Reliance, and related topics.

Place: Merrill Corporation 2000 Market Street, 29th FL Philadelphia, PA 19103 (215) 246-0404	Date and Time: 09/22/2009 9:00 am

The deposition will be recorded by this method: stenographic and videographic means

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

(1) All documents or materials relating to any actual or potential work performed for Reliance Insurance Company on behalf of Accenture including but not limited to any contracts, draft contracts, statements of work, or letter agreements:
(2) Any documents discussing the technology or features that became known as Accenture's Claims Components including but not limited to manuals, source code, marketing documents, Accenture emails and the like. Produce copies of these documents to Breslin Specialized Services, 324 Maypole Road, Upper Darby, PA 19082; (877) 273-7546

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/08/2009

CLERK OF COURT

OR

____
Signature of Clerk or Deputy Clerk

/s/ Julia Heaney
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Guidewire Software, Inc. , who issues or requests this subpoena, are:

Julia Heaney (#3052)
Morris, Nichols, Arsht, Tunnell LLP
1201 N. Market St., 18th FL, P.O. Box 1347, Wilmington, DE19899-1347; (302) 351-9221; jheaney@mnat.com

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 1:07-cv-00826-SLR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ____________ .

☐ I personally served the subpoena on the individual at *(place)* ______________________
______________________ on *(date)* ____________ ; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* ____________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ____________ , and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ____________
______________________ on *(date)* ____________ ; or

☐ I returned the subpoena unexecuted because ______________________ ; or

☐ Other *(specify)*:

.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
$ ____________ .

My fees are $ ____________ for travel and $ ____________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ____________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. 1:07-cv-00826-SLR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* DAVID P. HOLLANDER
was received by me on *(date)* 9-9-09 .

☐ I personally served the subpoena on the individual at *(place)* ______ on *(date)* ______ ; or

☑ I left the subpoena at the individual's residence or usual place of abode with *(name)* Alexis Hollander - wife, a person of suitable age and discretion who resides there, on *(date)* 9/9/09 @ 528pm, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* ______ , who is designated by law to accept service of process on behalf of *(name of organization)* ______ on *(date)* ______ ; or

☐ I returned the subpoena unexecuted because ______ ; or

☐ Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ ______ .

My fees are $ ______ for travel and $ ______ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 9/9/09

[signature]
Server's signature

Granine Kopishke Process Server
Printed name and title

P O Box 325 Upper Darby PA 19082
Server's address

Additional information regarding attempted service, etc:

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCENTURE GLOBAL SERVICES GmbH, and ACCENTURE LLP,	)	
Plaintiffs,	)	C.A. No. 07-826-SLR
v.	)	**JURY TRIAL DEMANDED**
GUIDEWIRE SOFTWARE, INC.,	)	
Defendant.	)	

PLAINTIFFS ACCENTURE GLOBAL SERVICES GMBH'S AND ACCENTURE LLP'S AND DAVID P. HOLLANDER'S OBJECTIONS AND RESPONSES TO DEFENDANT GUIDEWIRE SOFTWARE, INC.'S
SUBPOENAS AD TESTIFICANDUM AND DUCES TECUM

Pursuant to Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, Plaintiffs Accenture Global Services GmbH and Accenture LLP (collectively "Accenture") and non-party David P. Hollander (collectively with Accenture, "Hollander"), by and through their undersigned counsel, hereby object to Defendant Guidewire Software, Inc.'s ("Guidewire") Notice of Subpoenas for Mr. Hollander, dated September 8, 2009 ("Notice"). Mr. Hollander reserves the right to supplement or amend his objections herein.

OBJECTIONS

1. Mr. Hollander objects to the Notice on the grounds that it was not personally served on him, as required by Rule 45(b)(1) of the Federal Rules of Civil Procedure; the Notice was left with Mr. Hollander's wife. The subpoena is therefore void for ineffective service.

2. Mr. Hollander further objects to the Notice on the grounds that it is unduly burdensome pursuant to at least Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure. To date, Guidewire has noticed at least 41 depositions, among which at least 23 of the witnesses

noticed are either current or former Accenture employees. Mr. Hollander's testimony is likely duplicative of that of witnesses that Guidewire has already deposed/will depose.

3. Mr. Hollander objects to the Notice on the grounds that it fails to set forth a reasonable date, time, and location for the deposition. The deposition will take place, if at all, at a mutually agreeable date, time, and location.

4. Mr. Hollander further objects to the Notice to the extent it seeks to impose requirements or obligations on him in addition to or different to those imposed by the Federal Rules of Civil Procedure, the Local Rules of the District of Delaware, any applicable orders of this Court, or any stipulation or agreements of the parties.

5. Mr. Hollander further objects to the Notice to the extent that it seeks the disclosure or identification of information that is protected by a recognized privilege or other immunity from disclosure, including, but not limited to, the attorney-client and work product privileges. Nothing in these objections is intended to be, or in any way shall be deemed, a waiver of any available privilege or immunity.

6. Mr. Hollander further objects to the Notice to the extent that it seeks information that is not relevant to any claim or defense, and is not reasonably calculated to lead to the discovery of admissible evidence.

7. Mr. Hollander further objects to the Notice to the extent that it seeks the disclosure or identification of information that is subject to a protective order in any other litigation or subject to an agreement of confidentiality with any third party and Mr. Hollander may not be authorized or able to disclose the information without violating the terms of those orders or agreements.

8. Subject to the Protective Order, Mr. Hollander further objects to the Notice to the extent that it seeks Accenture's confidential, proprietary, and/or trade secret information.

9. Mr. Hollander further objects to the Notice to the extent that it seeks legal conclusions and/or seeks information based on legal conclusions.

10. Mr. Hollander further objects to the Notice to the extent it seeks duplicative information already provided/that will be provided to Guidewire in the form of interrogatory responses or documents and/or other depositions.

11. Mr. Hollander further objects to the Notice to the extent that it seeks information that is already known or available to Guidewire or within the control or custody of Guidewire.

POTTER ANDERSON & CORROON LLP

By: /s/ Richard L. Horwitz
Richard L. Horwitz (#2246)
David E. Moore (#3983)
D. Fon Muttamara-Walker (#4646)
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Attorneys for Plaintiffs
Accenture Global Services GmbH
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OF COUNSEL:

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L. Scott Oliver
Kimberly N. Van Voorhis
Diana Luo
Ruchika Agrawal
Matthew Chen
Douglas Chartier
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel: (650) 813-5700

Dated: September 16, 2009
933365 / 32523

CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on September 16, 2009, a true and correct copy of the within document was caused to be served on the attorney(s) of record at the following addresses as indicated:

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

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Julia Heaney
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865182 / 32523

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October 2009, I served the foregoing Motion to Compel Compliance with Subpoena on the following addressees by email and First Class Mail:

Ames Pooley, Esq.
L. Scott Oliver
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA

Richard L. Horwitz
David E. Moore
D. Fon Muttamara-Walker
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19899

By: [signature]
Daniel J. Goettle